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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,183	12/11/2003	Roman D. Versch	12,562	2615

7590

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EXAMINER

FISHER, MICHAEL J

ART UNIT

PAPER NUMBER

3629

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/735,183	Applicant(s) VERSCH, ROMAN D.	
	Examiner Michael J. Fisher	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 recites the limitation "...the weight of all three A ingredients..." in line 2.

There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "...the weight of all three B ingredients..." in line 2.

There is insufficient antecedent basis for this limitation in the claim.

Note: For examination purposes, it will be assumed that the recitation of the "three ingredients" is reflected in the statement from claim 1 where there are disclosed "A", "B" and "C" ingredients (plural).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PAT 6,493,641 to Singh et al. (Singh).

As to claim 1, Singh discloses a method comprising: establishing a basic formula for pet food that includes ingredients (col 4, lines 55-60) and further discloses distributing a blended formulation for sale (fig 1, 110, bins 1-3 and liquid tanks 112,113) and further teaches changing the formula based on climate conditions (col 8, lines 9-11).

Singh does not, however, specifically teach which components would be which (whether A, B or C) and which would be increased or decreased and neither teaches that there are only three ingredients.

As Singh does teach altering the composition based on climate conditions, it would have been obvious to increase and decrease the amount of each component as necessary for the climate conditions, whether warmer or colder. The steps would occur at different times of the year as some times are warmer and some colder. Any could be labeled, "A", "B" or "C".

As to claims 2 and 3, as Singh discloses changing according to season, it would be inherent that the formula changes with the seasons.

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As to claims 4,5,6, Singh discloses protein and fat containing substances and carbohydrates (col 13, lines 45-49).

As to claim 7, the distribution step would occur year-round and the level of the ingredients is shown to change with season.

As to claim 8, Singh discloses ingredients with different, distinctive appearances (col 14, lines 27-30).

As to claim 9, Singh discloses different colors (col 14, lines 36-38).

As to claims 10,11, as discussed above, Singh discloses adjusting based on temperature concerns, this would inherently include indoor and outdoor temperatures.

As to claim 12, it would have been obvious to one of ordinary skill in the art to slow distribution of unneeded ingredients to avoid their spoiling as they stay in stock, unused.

As to claims 13 and 14, as the method is disclosed as adjusting based on season, this would be inherent.

As to claims 15,16, Singh does not specifically teach a primary or secondary, proprietary additive characterized as enhancing the effect of steps c) or d). The examiner takes Official Notice that it is very well known for advertisers to characterize their ingredients as being superior, therefore, it would have been obvious to advertise to modify Singh by advertising that the suppliers proprietary ingredients enhances both steps c) and (d to attempt to increase sales of the product.

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As to claim 17, Singh does teach increasing and decreasing ingredients but does not label them. It would have been obvious to name them A and B to distinguish them each from the other, thereby meeting the limitations as claimed.

As to claim 18, Singh does not teach the exact weights of the ingredients. It would have been obvious to label the most prevalent ingredients, those that add up to 50% of the total formulation, A and B as these would be the most used ingredients.

As to claims 19 and 20, Singh does not teach the exact amounts. However, the ingredients in the formula could, as calculated for a respective pet, meet these limitations, there being nothing to preclude such a formula, thereby meeting the limitations as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Fisher whose telephone number is 571-272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael J. Fisher



Patent Examiner
GAU 3629

MF 

3/19/06